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24 Attorneys for Defendant
25 UNISOURCE WORLDWIDE, INC.

15 UNITED STATES DISTRICT COURT
16
17 NORTHERN DISTRICT OF CALIFORNIA—SAN FRANCISCO DIVISION

18 JOHN CREIGHTON, JAMES FITZPATRICK
19 AND WILLIAM GALVIN, on behalf of
20 themselves and others similarly situated,
21 Plaintiffs,
22 vs.
23 UNISOURCE WORLDWIDE, INC., and
24 DOES 1 through 50, inclusive,
25 Defendants.

CASE NO. CV 06-03860 the
**STIPULATION FOR CONTINUANCE OF
CERTAIN INITIAL DATES; [PROPOSED]
ORDER**

[Filed concurrently herewith: Declaration of
Rebecca Gose Lynch in support of
Stipulation for Continuance of Certain
Initial Dates]

(Alameda Superior Court Case No.
RG06270215)
Courtroom: 12
The Honorable Thelton E. Henderson

1 The parties, through their respective counsel and by this Joint Stipulation, hereby
 2 request the Court to continue for a brief period the initial dates established in the court's initial
 3 order resulting from the CMC held on September 25, 2006.

4 **PROCEDURAL BACKGROUND**

5 On May 19, 2006, Plaintiffs filed the instant action in the California Superior
 6 Court for Alameda County. They served their Complaint on defendant Unisource Worldwide,
 7 Inc. ("Unisource") on May 22, 2006. Unisource answered the Complaint on June 19, 2006, and
 8 removed the action to this Court on June 20, 2006.

9 **FACTUAL AND LEGAL BASES FOR CLAIMS AND DEFENSES**

10 **AND ISSUES IN DISPUTE**

11 Plaintiffs were, or currently are, employed as sales representatives by Unisource.
 12 They assert claims for alleged violations of California labor law on behalf of themselves and all
 13 persons similarly situated. In their Complaint, Plaintiffs make four principal allegations: (a) that
 14 Unisource violated California labor law by not reimbursing sales employees for necessary
 15 business expenses; (b) that Unisource illegally made deductions from employees' earned
 16 commissions; (c) that Unisource unfairly calculated employees' earned commissions; and (d) that
 17 Unisource improperly sought a waiver and release from employees for the non-payment of wages
 18 and business expenses. Based on these principal allegations, Plaintiffs allege seven causes of
 19 action against Unisource: (1) breach of contract, (2) breach of implied covenant of good faith and
 20 fair dealing, (3) nonpayment of wages and improper deductions, (4) violation of Business &
 21 Professions Code §§ 17200, et seq., (5) violation of Labor Code § 2802, (6) violation of Labor
 22 Code §§ 98.6 and 1102.5, and (7) fraud.

23 Although this lawsuit is in its early stages and discovery is still ongoing,
 24 Unisource disputes all of Plaintiffs' principal allegations and it disputes that class treatment is
 25 appropriate in this action.

26 **ANTICIPATED MOTIONS AND CLASS CERTIFICATION DETERMINATION**

27 Plaintiffs' Complaint has been filed as a class action. At this stage in the
 28 proceedings, the parties anticipate that the following motions will be filed in this action: Motion

1 for Class Certification and Motion for Summary Judgment or, in the Alternative, for Partial
2 Summary Judgment. Other motions or filings may be necessary as this litigation progresses.

3 Regarding the anticipated Motion for Class Certification, the parties had earlier
4 agreed that the motion would be filed no later than April 15, 2007, the opposition due by May 15,
5 2007, and any reply due by June 1, 2007. The motion will then be set for hearing on any
6 subsequent Monday convenient to the Court. The parties proposed June 18, 2007 as the hearing
7 date for the anticipated Motion for Class Certification. The court accepted the parties suggested
8 dates set out above. The Court also set March 5, 2007 as the date for a further case management
9 conference.

10 The parties have already engaged in some discovery, but more time is required to
11 complete this discovery and engage in meaningful negotiations for potential settlement. Several
12 depositions have been conducted and five or six more depositions are scheduled (some of which
13 are on the East Coast) or are being scheduled. The parties ran into scheduling difficulties over the
14 holidays and are working diligently to accommodate depositions in a timely manner. Defendant
15 has supplied Plaintiffs' counsel nearly thirteen thousand pages of documents, which have
16 consequently involved a great deal of time to review. Further documents may still be requested.
17 Plaintiffs have also served interrogatories on Defendant, which Defendant has advised will take
18 considerably longer than the usual 30 days to answer. Due to the difficulties in completing this
19 discovery, the parties have had to reschedule our private mediation with one of San Francisco's
20 most respected employment mediators, Mark Rudy, for April 12, 2007 and this also necessitates a
21 continuance in the earlier dates. Both parties are taking the mediation seriously.

22 Because of the scheduling difficulties the parties encountered around the holidays,
23 the extent of discovery involved, and the mediator's schedule, the present schedule has become
24 unduly optimistic and impracticable. The parties therefore respectfully request that the Court
25 accept the proposed order below, which establishes a revised schedule to accommodate these
26 concerns by moving the relevant dates back by approximately two (2) months as follows: the
27 deadline for mediation would be moved to April 12, 2007, the deadline for fact discovery with
28 regard to class certification issues would be moved to May 15, 2007, the filing deadline for any

1 motion for class certification would be moved to June 15, 2007 (with the opposition due by July
2 15, 2007 and the reply due by August 1, 2007), the hearing on any motion for class certification
3 would be continued to August 20, 2007, and the date for further case management conference
4 would be continued to May 7, 2007 at 1:30 p.m.

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Respectfully submitted:

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FINE, BOGGS & PERKINS LLP

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DATED: January 16, 2007

By: Ned A. Fine by ms
NED A. FINE

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Attorneys for Plaintiffs
JOHN CREIGHTON, JAMES FITZPATRICK, and
WILLIAM GALVIN

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DATED: January 12, 2007

MUNGER, TOLLES & OLSON LLP

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By: Rebecca Lynch
REBECCA G. LYNCH

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Attorneys for Defendant
UNISOURCE WORLDWIDE, INC.

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[PROPOSED] REVISED CASE MANAGEMENT ORDER

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3 The Court's previous Case Management Order is revised as follows:

- 4 (1) The parties shall participate in private mediation on or before April 12, 2007;
- 5 (2) Discovery in this matter shall be bifurcated, with the first phase of discovery
- 6 limited to class certification issues. Fact discovery with regard to the merits of the individual
- 7 claims or class claims will proceed after the parties have briefed the anticipated Motion for Class
- 8 Certification and the Court has determined whether class certification is appropriate here. While
- 9 all discovery conducted during the first phase of discovery will be directed at class certification
- 10 issues only, the parties will not limit the scope of their responses to otherwise valid discovery
- 11 requests during the first phase of discovery based on the bifurcation of issues in discovery;
- 12 (3) Fact discovery with regard to class certification issues shall be completed by
- 13 May 15, 2007;
- 14 (4) Any Motion for Class Certification will be filed by June 15, 2007, with the
- 15 opposition due by July 15, 2007, and any reply due by August 1, 2007. The Motion for Class
- 16 Certification shall be heard on August 20, 2007.
- 17 (5) The date for further case management conference will be continued to May 7,
- 18 2007 at 1:30.

19 IT IS SO ORDERED.

20 Dated: 01/17/07

21 _____ Judge Thelton E. Henderson

